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IN THE CHHATTISGARH HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 1483 OF 2001

PETITIONERS

1) Chahttisgarh Pradesh Shikshak Congress
Bilaspur.
Through : The State General Secretary
Shushil Vajpayee, Teacher's Colony,
High School, Jagdalpur, Distt. Bastar.

2) Shushil Vajpayee, aged about 45 years,
son of Shri S.K.Vajpayee, resident of
Teachers Colony, Jagdalpur.

3) Smt. Krishna Karmahe, wife of Shri
D.N. Karmahe, Age 56 years, resident of
Teacher's Colony, Jagdalpur.

P.R. No. 1541/01 presented by Shri Avinash K. Mishra dated 13.8.2001

4) Smt. Maya Shrivastava, wife of Shri
Sunil Shrivastava, aged about 42 years,
resident of Qtr No. G-5 Teacher's
Colony, Jagdalpur.

शपथ आयुक्त, छत्तीसगढ़ बिलासपुर तहसील 84/8/C

5) Smt S Mudaliyar, wife of Shri S.S.
Mudaliyar, aged about 57 yerars,
resident of Qtr NO. G-10, Teacher's
Colony, Jagdalpur.

6) Ku. N.B. Kaalib, daughter of Shri
Suleman Kaalib, aged about 37 years,
resident of Qtr No. 01, Teacher's
Colony, Jagdalpur.

7) Ku. G.V. Chhatree, daughter of Shri
C.L. Chhatree, aged about 48 years,
resident of Pratap Ganjpara,
Jagdalpur.

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8) Smt R.S. Rao, wife of Late Shri S.N. Rao, aged about 33 years, resident of Qtr No. G-13, Teachers Colony Jagdalpur.

9) Smt Sushila Vyas, wife of Shri Ratan Vyas, aged about 38 years, resident of Qtr No. G-2, Teachers colony, Jagdalpur.

10) Smt. Kishory Bareik, wife of Shri Atul Bariek, aged about 39 years, resident of – Opposite Kisan Bakery, Ambedkar Ward Jagdalpur.

11) Smt. Anwary Rizvee, wife of Shri Abbas Ali Khan, aged about 47 years, resident of Teachers colony, Jagdalpur.

12) Smt. Lekha Naidu, wife of Shri I Sudhakar Rao, aged about 45 years, resident of Qtr No. H-15, Maharani Ward Jagdalpur.

13) Smt. Smrity Mishra, wife of Shri Sekhar Mishra, aged about 34 years, resident of Qtr No. H-14, Maharani Ward, Jagdalpur.

14) Smt. Chittra Thantarate, wife of Shri Aadesh Thantarate, aged about 39 years, resident of Qtr NO. 432, Vrindavan Colony, Jagdalpur.

VERSUS

RESPONDENTS 1) The State of Chhattisgarh through Secretary, Department of School Education D.K. Mantralaya, Raipur.

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2) The Director, Public Instructions, Chhattisgarh Pension bada, Raipur, Chhattisgarh.

3) The Collector, Bastar at Jagdalpur, Chhattisgarh.

4) The Chief Executive Officer, Zila Panchayat Bastar, at Jagdalpur.

5) The Asst. Director, Tribal Welfar Department, Jagdalpur.

6) The District Education Officer, Distt.Bastar.

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA.FOR ISSUANCE OF WRIT IN THE NATURE OF CERTIORARI, MANDAMUS, PROHIBITION OR ANY OTHER SUITABLE WRIT/WRITS, ORDER/ORDERS AND DIRECTION/DIRECTIONS.

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. NO. 1343 / 2001
W.P. NO. 1351 / 2001
W.P. NO. 1483 / 2001

Petitioner : Chhattisgarh Tratiya Warg Shashkiya Karamchari Sangh.

Versus

Respondents : State of Chhattisgarh and ors.

O R D E R

(Passed on 20.8.2001)

In the above three writ petitions transfer policy of theState government dated 30.6.2001 has been assailed on the ground that the same is unreasonable, un-just and arbitrary. Consequent to the issuance of the said impugned order,orders of transfer have been issued in respect of the School Teachers concerning Primary schools and the Middle Schools of two districts namely Raipur and Raigarh. It may also be stated that as far as the teachers who are affected by the consequent order have not approached this Court (from Raipur district). However, there are several petitions filed by the school teachers pertaining to district of Raigarh.

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2. Though various submissions have been made in favour and against the transfer policy of the State government in this regard even including inconveniences likely to be faced by the individual teachers, it appears to me that the whole question is a question of policy as regards the transfer which has been coined as rationalisation. In order to appreciate the points involved in the present case it is necessary for us to refer to the policy in question. The said policy is annexure P-1 in writ petition 1443/ 2001. However, since the order has been rendered in Hindi, at my request Dr.Shukla learned Dy. Advocate General of Chhattisgarh State has provided a copy rendered in English language for my benefit. It reads as under :-

" Yuktiyukta Karan " (Rationalization) of posting of teachers in the Govt.Schools.

The Govt. of Chhattisgarh has decided to have no school without any teacher or single teacher in the State.

In the backdrop of this decision, the postings of teachers in all the Govt.Schools have to be reviewed on rational basis. The needed number of teachers in each school has to be estimated and whereever there is a surplus of staff, they should be transferred to such schools which are understaffed as per norms. The norms / parameters for rationalization have been laid down as under :-

1. Each Primary School should essentially have atleast 2 (two) teachers, similarly every Middle School should necessarily have 3 (three) teachers.

2) Each District should be treated as a unit for Yuktiyuktakaran (Rationalization) on the basis of total no. of students in primary schools and middle schools the TEACHER-TAUGHT RATIO should be worked-out. This ratio should form the basis of postings in a school as against the previous criterion of considering the no. of posts sanctioned for a school. The no. of post sanctioned shall not be considered as basis for rationalization. Where-ever the no. of teachers is more than the average ratio estimate as per distt.unit - the excess staff should be transferred to such schools where there is need (irrespective of the no. of posts sanctioned), For example if the teacher taught ratio is 1 : 49 in any district, this ratio will form the basis for estimating the number of teachers needed and also to calculate the excess no. of teachers.

3. The surplus staff will be transferred within the same district, preferably within the same block or the nearby block.

4. The following guideline should form the basis for transferring a teacher :-

A. Junior-most teachers only be considered as surplus liable to be transferred.

B. Lady-Teachers should preferably not be transferred but where all the teachers are women, the junior-most should only be transferred to the nearest possible school.

C. Physically handicapped / seriously ill and senior teachers due to retire in a year should be left out while establishing junior-most. If there are more than one teacher with

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the same date of appointment, he/she should be transferred who has stayed longer in the school.

D. Those who have undergone training for teaching in standard I & II from this academic session should not be transferred.

Surplus teachers in the urban areas should be transferred to rural schools.

Priority should be given to such schools which do not have teachers or have one teacher only and the schools which were started last year but which could not be provided with needed no. of teachers. If a school does not get sufficient no. of teachers even after RATIONALIZATION, then the concerned Janpad Panchayat / Gram Panchayat should get teachers by pooling its own resources or by taking local assistance in this regard.

8. It has been observed that mor than one school is being run in the same building in urban areas with surplus teachers. In such cases all the schools in a building should be taken as <u>one</u> unit for calculation of surplus teachers and transfer thereof.

9. Rationalization of teachers will be done by a committee of Distt. Collector, Distt.Education Officer and District Head of Tribal Welfare / Social Welfare Deptt and should have a positive approval of the Minister-in-charge of the District.

The parameters laid-down for rationalization should be followed strictly.

By order and in the name of
Governor of Chhattisgarh.

SD/- B.K.Minz
Joint Secretary
Govt. of Chhattisgarh,
Ministry of Education."

In Writ Petition No. 1343 /2001 Mr. P.S.Nair appears with Mr.Manindra Shrivastava for the petitioner. As regards para 4-A of the impugned ~~notice~~ it is submitted by the counsel representing the petitioner that instead of junior-most teachers being considered as surplus teachers for the purpose of transferring them from the school where they are teaching to some other school, it should be contrary-wise and the cases of senior teachers in fact should be considered for the purpose of transfer. Accordingly it is submitted that this aspect of the matter should be looked-into by this Court in as much as ~~that~~ such policy does not appear to be reasonable and fair as there is no reasonable rationale for laying-down such policy. It is also submitted that policy to transfer teachers who are on the verge of retirement can not be said to be reasonable. In terms of policy laid-down in this regard in para 4.C the teachers who are due to retire in a year should be left out of this policy of transfer. It is submitted that normally the persons who are to retire in 2-3 years should not be touched by any policy of transfer in as much as on the verge of retirment

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they need to settle their various accounts with the State Government and this can be done if they are allowed to continue to stay in the place of posting for 2-3 years in order to settle the accounts before their retirement. Since similar submissions have been advanced in respect of the points which I have stated above, it appears that this matter should be dealt-with on merits at this stage.

3. After hearing Mr.P.S.Nair, and Mr.Manindra Shrivastava on behalf of the petitioner in writ petition No. 1343/2001, Mr.Rajiv Shrivastava in W.P.1351/2001 and Mr. P.K.C. Tiwari in W.P.No. 1483/2001 and also after hearing Mr.Ravindra Shrivastava,learned Advocate General of State of Chhattisgarh as well as Dr.N.K.Shukla learned Dy. Advocate General of the State of Chhattisgarh, I am of the view that the submissions made on behalf of the petitioners are reasonable in this regard,in asmuchas in my view,a blanket policy of transfer of the junior most teachers from one school to another would not be justifiable and reasonable. At this stage after hearing the counsel for the parties at length, I am of the view that it would be just and reasonable that teachers who are to be affected by the policy of transfer should have rendered services at a particular institution atleast for three years. As regards transfer of teachers who are on the verge of retirement,in my view, it would be just and reasonable if they are not affected by any order of transfer if they are

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to serve only for about 2-3 years before they retire. I may however state that there may be exceptions where because of need of service exigency even in respect of the persons who are on the verge of retirement, transfer may be effected. However, such should be an exception, because of the reasons that I have recorded. In terms of para 4.B of the policy " lady teachers should not be transferred. Where all the teachers are women, the junior most should only be transferred to the nearest possible school." Though this aspect of the policy has been assailed, I may state that taking into consideration all factors including the policy generally over the weaker sections of the society, this aspect of the policy can not be said to be unreasonable though in case of transfer three years period should be followed generally. Learned Advocate General submits that this policy pertaining to the women teachers is fair and it must be accepted without any modification. It appears to me that transfer, if it becomes necessary, is to be effected transferring such women teachers as far as possible to the nearest possible schools. In other words, the policy indicates that transfer of women teachers may be considered if posting is in the vicinity. This , I think, is reasonable.

4. As regards the question as to who should be transferred even among the male teachers, it has been argued at the bar that competent authority should at all time keep the gradation list updated so that

while issuing transfer orders they may take such list into consideration in order to find-out as to who among them has been transferred in the past and who among them should be transferred at a particular time. It appears to me that this submission is also quite reasonable and I would direct that the State government should prepare the gradation list. In my view the teachers are entitled to know their respective seniority. I would direct the State government / competent authority to prepare the up-dated gradation list of the school teachers in view of the present policy preferably within a period of six months. However, I shall make it clear that as far as the present efforts to bring about some transfers are concerned, such gradation list shall not stand in the way.

5. The petitioner in W.P.No. 1343/2001 is an association of teachers of Bilaspur union. In fact, no order of transfer has been issued in respect of members of this association in Bilaspur district. The writ petitioner has made a representation and the same is pending before the Government. It appears that once ~~the~~ representation is submitted, the competent authority is under obligation to examine such representation and dispose of the same on merit without delay. I would direct the competent authority to examine the representation submitted by the petitioner- union and pass necessary orders in the light of the findings recorded by this court in the

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present case. I shall make it clear that the competent authority shall independently examine the grievances highlighted in the representations in the light of the findings recorded by this court and pass necessary orders. This shall be done within a period of one week from the date of receipt of this order. Since merit of this case has already been heard by this court,no personal hearing is necessary.

6. On a careful perusal of the pleadings filed by the parties and after hearing the counsel representing the parties,it is clear that in the present case the services conditions of the school teachers are not at all affected. Their pay and allowances are not affected. Their monetary benefits of any kind as a result of their employment by the State government are not at all affected. There is nothing to indicate that their seniority in the matter of promotional avenues and other benefits shall be affected. If that be so, it is a question of transfer in view of the rationalization policy in order to meet a peculiar situation that has arisen in the new state ofChhattisgarh. I have no doubt in my mind that such policy is absolutely within the domain of the State government. Various submissions have been made as regards the details of the student - teacher ratio and also as regards location of certain schools in rural and far flung

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areas of the State vis-a-vis the schools located in towns and cities of this State. It is not at all necessary for me to examine such details. It is for the competent authority to sort-out what kind of ratio of teacher and student should be maintained in the best interest of impartation of education in the State. I am only happy to see that the State has taken this step in right earnest. This State came into existence w.e.f. 1.11.2000. It is a good idea that new policy would have been brought into existence as regards school education. The infirmity which has been pointed-out should be removed and the policy should be pressed into service.

7. At one stage it has been submitted by Mr. Rajiv Shrivastava that the teachers who are affected by the order of transfer have been denied normal allowances namely TA and DA. I shall make it clear that as regards this submission ~~that~~ the teachers who are transferred should stand entitled to their normal allowances prescribed in this regard under the relevant rules. They can not be deprived of their entitlement without reasonable ground. I am happy to hear at the bar now that the State govt. during the pendency of this petition has decided to allow normal TA and DA.

8. In my view it is for the competent authority to examine the needs of each school and to do the needful immediately to meet such needs particularly as regards the question of transfer and posting whether it in the rural areas or in the urban areas.

It has been pointed-out by the counsel representing the petitioners that para 8 of the policy which states that if more than one school is run in the same building in urban areas with surplus teachers,the school in the building should be taken as one unit for calculation of surplus teachers is not reasonable in as much as though two schools may be in the same building,their conditions may always be different. In my view it would be reasonable that each school is dealt-with and considered separately in the matter of application of the present policy.

8. Para 9 of the policy states " Rationalization of teachers will be done by a committee of district collector,distt.Education Officer and District Head of Tribal Welfare / Social Welfare department and should have a positive approval of the Minister-in-charge of the district." It has been argued on behalf of the petitioners that once the policy has been laid-down,there should be no room for a Minister-incharge to interfere at the time of implementation particularly with reference to transfer of school teachers. An apprehension has been raised that if positive approval of the Minister - in-charge of the district becomes necessary in the matter of transfer,there is bound to arise nepotism,favourtism, and such other political influences which should be avoided. On careful perusal of this part of the Policy, I am of the view that in order to have a policy free

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from political interference and in order to have public confidence in the State policy and also to have transperancy in such a policy and particularly when in the last para of the policy it has been stated " the parameters laid-down for rationalization should be followed strictly," there appears no utility to insert that there should be positive approval of the Minister-in-charge,in the matter of transfer.

In this view of the matter I am inclined to hold that if this portion of the policy remains,it would appear unreasonable. Therefore, this portion namely " should have positive approval of the Minister-in-charge of the district" should stand deleted,as unreasonable. Henceforth such positive approval shall not be considered necessary in the implementation of the policy.

9. Mr.Tiwari submits that certain representation is pending before the government from the association of Bastar district,Dr.Shukla states that if there be any matter pending before the competent authority the same shall be examined and disposed of. Let the competent authority examine and dispose of the representation on merit within 10 days.

In the result, in view of the findings, observations ~~and directions~~ and directions recorded above,these three petitions are disposed of.

Sd/-
Chief Justice

J